

IN THE COURT OF APPEAL

IN THE MATTER OF: *The Public Utilities Board Act, CCSM, c P280*

AND IN THE MATTER OF: The Public Utilities Board's "Needs for and Alternatives To (NFAT)" Review of Manitoba Hydro's Preferred Development Plan to Construct the Keeyask and Conawapa Generating Stations and Associated Transmission Facilities

AND IN THE MATTER OF: An intended appeal from Order No. 67/13 of the Public Utilities Board of Manitoba dated June 11, 2013, and Order No. 91/13 of the Public Utilities Board dated August 9, 2013, which reconsidered Order No. 67/13.

BETWEEN:

MANITOBA HYDRO-ELECTRIC BOARD

(Applicant) Respondent,

-and-

THE PUBLIC UTILITIES BOARD OF MANITOBA

Respondent

-and-

CONSUMERS' ASSOCIATION OF CANADA (MANITOBA BRANCH), GREEN ACTION CENTRE, MANITOBA INDUSTRIAL POWER USERS GROUP, MANITOBA KEEWATINOWI OKIMAKANAK INC., MANITOBA METIS FEDERATION

(Interveners) Respondents,

-and-

PIMICIKAMAK

(Applicant Intervener) **Applicant**

FILED

**NOTICE OF MOTION
CONTESTED BEFORE A JUDGE
on September 26, 2013 at 10:00 a.m.**

COURT OF APPEAL

SEP 09 2013

**LAW COURTS
WINNIPEG**

OLTHUIS, KLEER, TOWNSHEND LLP
229 College Street, 3rd Floor
Toronto, ON M5T 1R4
BRYCE EDWARDS and STEPHANIE KEARNS
Ph: 416-981-9330
Fax: 416-981-9350

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BETWEEN:

MANITOBA HYDRO-ELECTRIC BOARD

(Applicant) Respondent,

-and-

THE PUBLIC UTILITIES BOARD OF MANITOBA

Respondent

-and-

CONSUMERS' ASSOCIATION OF CANADA (MANITOBA BRANCH), GREEN ACTION CENTRE, MANITOBA INDUSTRIAL POWER USERS GROUP, MANITOBA KEEWATINOWI OKIMAKANAK INC., MANITOBA METIS FEDERATION

(Interveners) Respondents,

-and-

PIMICIKAMAK

(Applicant Intervener) **Applicant**
Appellant

NOTICE OF MOTION

TAKE NOTICE that a Motion will be made on behalf of the applicant, Pimicikamak, before the presiding chambers judge, on September 26, 2013 at 10:00 a.m., or as soon thereafter as the Motion can be heard at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

THE MOTION IS FOR:

1. An Order that Pimicikamak be granted leave to appeal to this Honourable Court from Order No. 67/13 of the Public Utilities Board of Manitoba (the "PUB") dated June 11, 2013, and Order No. 91/13 of the PUB dated August 9, 2013, which reconsidered Order No. 67/13.
2. An order extending the time for Pimicikamak to file and serve its brief and affidavit in support of this Notice of Motion to a date after the filing of the Notice of Motion.
3. Costs
4. Such other Order as may be just.

THE GROUNDS OF THE MOTION ARE:

1. The PUB erred on:
 - (a) questions involving jurisdiction;
 - (b) points of law; and
 - (c) facts expressly found by it relating to matters before it in this case.

PUB's Errors in Order No. 67/13 and Order No. 91/13

2. The PUB erred in law or exceeded its jurisdiction by violating the rules of procedural fairness by not giving Pimicikamak an adequate opportunity to present the PUB with its case for intervener status in the PUB's proceedings respecting the Need for and Alternatives To Manitoba Hydro's Preferred Development Plan for the province of Manitoba (the "NFAT Review").
3. The PUB erred in law or exceeded its jurisdiction by violating the rules of procedural fairness by not allowing Pimicikamak enough time or space to prepare its application for intervener status in the NFAT Review.

4. The PUB erred in law or exceeded its jurisdiction by violating the rules of procedural fairness by not providing Pimicikamak adequate reasons for denying it intervener status in the NFAT Review in Order No. 67/13 or in Order No. 91/13.
5. The PUB erred in law or exceeded its jurisdiction by effectively determining they did not have to apply or abide by the rules of procedural fairness, most notably in Order No. 91/13.
6. The PUB erred in law or exceeded its jurisdiction by fettering its discretion by acting in an arbitrary or capricious manner in denying Pimicikamak intervener status in the NFAT Review in Order No. 67/13 and in Order No. 91/13.
7. The PUB erred in law or exceeded its jurisdiction by fettering its discretion by acting outside of the objects of *The Public Utilities Board Act*, CCSM, c P280 (the "*PUB Act*") and the terms of reference for the NFAT Review (the "Terms of Reference") in denying Pimicikamak intervener status in Order No. 67/13 and in Order No. 91/13.
8. The PUB erred in law or exceeded its jurisdiction by relying on irrelevant factors and failing to consider relevant factors when granting intervener status to some parties and denying Pimicikamak intervener status in the NFAT Review.
9. The PUB erred in law or exceeded its jurisdiction by ignoring the unique perspective and evidence Pimicikamak would raise in an intervention in the NFAT Review and ordering in its Order No. 67/13 and Order No. 91/13 that Pimicikamak was not allowed to intervene on the basis that the issues it intended to raise would be duplicative of other intervener applicants.
10. The PUB erred in law or exceeded its jurisdiction by misconstruing the purpose of the NFAT Review and its Terms of Reference and the PUB's role and the role of the interveners in the NFAT Review in making Order No. 67/13 and Order No. 91/13.
11. The PUB erred in law and in fact by mischaracterizing or misrepresenting Pimicikamak's application for intervener status and the issues Pimicikamak intended to raise in its intervention in making Order No. 67/13 and Order No. 91/13.

12. The PUB erred in law and in fact by mischaracterizing Pimicikamak's status and relationship with other intervener applicants in denying Pimicikamak intervener status in the NFAT Review.
13. The PUB erred in law and in fact by finding that other applicants for intervener status had the capacity to speak on the issues Pimicikamak in its application for intervener status indicated it intended to address.
14. The PUB erred in law by failing to provide Pimicikamak with notice of Order No. 91/13 in accordance with s. 51(2) of the *PUB Act*.

The Issues Raised are of Sufficient Importance to Warrant the Court's Consideration

15. The issues for which leave to appeal is sought merit the attention of the Court as they are matters of interest to all Manitobans, particularly Manitobans who may consider applying to the PUB for intervener status in future applications and reviews before the PUB. Interveners are the only parties which test Manitoba Hydro's assertions and evidence and thus they provide a critical role in PUB proceedings and decisions.
16. The scope of the PUB's jurisdiction in relation to selecting interveners has been a long-standing issue affecting Manitobans, including Pimicikamak, that merits the attention of the Court.
17. The need for the PUB to act within the parameters of its jurisdiction in selecting interveners is heightened for the NFAT Review given its seminal importance and, therefore, merits the attention of the Court.

Extension of Time for Filing Brief and Affidavit

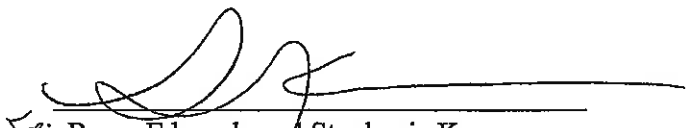
18. Pimicikamak has continuously intended to appeal Order 67/13 and Order 91/13.
19. Pimicikamak has a reasonable explanation for the delay in filing its brief and affidavit in support of this Notice of Motion because the PUB failed to serve Order No. 91/13 on Pimicikamak at all.

20. The PUB will not be prejudiced by the delay in receiving Pimicikamak's brief and affidavit in support of this Notice of Motion.
21. The Applicant relies on Sections 24, 44, 51, 54, 58, and 107(b) of the *PUB Act*.
22. Such further and other grounds as counsel may advise and this Honourable Court permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The record or parts thereof.
2. The Affidavit of Darwin Paupanakis to be sworn.
3. Such further and other material as counsel may advise and this Honourable Court may allow.

September 9, 2013


For: Bryce Edwards and Stephanie Kearns
Olthuis, Kleer, Townshend LLP
229 College Street, 3rd Floor
Toronto, ON M5T 1R4
Phone: 416-981-9330
Fax: 416-981-9350
Email: bedwards@oktlaw.com;
skearns@oktlaw.com
Lawyers for the (Applicant) Appellant

TO: THE REGISTRAR OF THE COURT OF APPEAL

AND TO: THE MANITOBA PUBLIC UTILITIES BOARD
c/o Fillmore Riley LLP
1700 - 360 Main Street
Winnipeg, MB R3C 3Z3
Email: bobbeters@fillmoreriley.com
Attention: R. F. (Bob) Peters

AND TO: MANITOBA HYDRO-ELECTRIC BOARD
360 Portage Avenue
Winnipeg, MB R3C 0G8
Email: mboyd@hydro.mb.ca
Email: pjramage@hydro.mb.ca
Attention: Marla Boyd and Patti Ramage

AND TO: CONSUMERS' ASSOCIATION OF CANADA
c/o Public Interest Law Centre
300 - 287 Broadway
Winnipeg, MB R3C 0R9
Email: bywil@pilc.mb.ca
Attention: Byron Williams

AND TO: GREEN ACTION CENTRE
c/o Gange Goodman & French
760-444 St. Mary Avenue
Winnipeg, MB R3C 3T1
(204)953-5401
Email: wsg@gangegoodmanfrench.ca
Attention: William S. Gange

AND TO: MANITOBA INDUSTRIAL POWER USERS GROUP (MIPUG)
Thompson, Dorfman Sweatman LLP
2200-201 Portage Avenue
Winnipeg, MB R3B 3L3
Email: afh@tdslaw.com
Attention: Antoine F. Hacault

AND TO: MANITOBA KEEWATINOWI OKIMAKANAK, INC. (MKO)
6th Floor - 338 Broadway Avenue
Winnipeg, MB R3C 0T2
Email: michaelanderson@mts.net
Attention: Michael Anderson

AND TO: MANITOBA MÉTIS FEDERATION
300 - 150 Henry Avenue
Winnipeg, MB R3B 0J7
Email: dchartrand@mmf.mb.ca
Attention: David Chartrand

SCHEDULE C

FORM 1
(Rule 112)

IN THE COURT OF APPEAL

Notice of Intent to Exercise Language Right

The attached document begins a proceeding in the Court of Appeal. Your rights may be affected in the course of the proceeding. You have a right to use either the English or the French language even where the attached document is in the other language, but in order to exercise your right you are required within 21 days of service of this document on you to file with the registrar of the court a notice of your intention to do so and to leave with the registrar an address for service. If you file such a notice, you will be notified, in the language indicated in your notice, of further stages in the proceeding by registered mail addressed to your address for service. If you do not file a notice of your intention to exercise your right, the appeal will continue in the language of the attached document. The time limited for your filing of a notice may be enlarged or abridged at any time by order of a judge made on application in either English or French.

Registrar
Manitoba Court of Appeal
Room 205 Law Courts Building
408 York Avenue
Winnipeg, Manitoba
R3C 0P9